

**NOT FOR PUBLICATION**

NO. 26006

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

JACEK NOWICKI, Claimant-Appellant, v.  
GMP ASSOCIATES, INC., and  
TRAVELERS INSURANCE COMPANY,  
Employer/Insurance Carrier-Appellee

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STATE OF HAWAII

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APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD  
(CASE NO. AB 2000-503 (2-97-11102) (2-98-04855))

ORDER DISMISSING APPEAL

(By: Lim, Acting C.J., Foley and Fujise, JJ.)

In this workers' compensation case, Claimant Jacek Nowicki (Claimant) appeals, *pro se*, the July 14, 2003 decision and order of the Labor and Industrial Relations Appeals Board (the Board) that granted a June 20, 2003 motion to dismiss filed by Employer-Appellee GMP Associates, Inc. and Insurance Carrier-Appellee Travelers Insurance Company (collectively, Employer). The motion sought dismissal of Claimant's appeal to the Board because Claimant had failed and refused to execute valid authorizations for release of his medical records, despite Employer's repeated requests and several successive Board orders that he do so. Claimant had appealed to the Board from the December 5, 2000 decision of the Director of Labor and Industrial Relations that denied Claimant's workers' compensation claims for psychological stress injuries arising on April 18, 1994 (Case No. 29804855) and September 13, 1995 (Case No. 29711102).

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After a painstaking review of the record and the briefs submitted by the parties, including repeated readings of Claimant's opening brief, we dismiss Claimant's appeal, because

(1) Claimant's opening brief does not conform in any manner or particular to any of the provisions of Hawai'i Rules of Appellate Procedure (HRAP) Rule 28 (2004), HRAP Rule 30 (2004) (where "the brief of an appellant is . . . not in conformity with these rules, the appeal may be dismissed or the brief stricken and monetary or other sanctions may be levied by the appellate court"); HRAP Rule 28(b)(4) (points of error "not presented in accordance with this section will be disregarded, except that the appellate court, at its option, may notice a plain error not presented"); HRAP Rule 28(b)(7) (points "not argued may be deemed waived"); Housing Fin. and Dev. Corp. v. Ferguson, 91 Hawai'i 81, 85, 979 P.2d 1107, 1111 (1999) (appellant's "failure to conform his brief to the requirements of HRAP Rule 28(b) burdens both the parties compelled to respond to the brief and the appellate court attempting to render an informed judgment. . . . [S]uch noncompliance offers sufficient grounds for the dismissal of the appeal" (citation omitted)); Schefke v. Reliable Collection Agency, Ltd., 96 Hawai'i 408, 420, 32 P.3d 52, 64 (2001); Bettencourt v. Bettencourt, 80 Hawai'i 225, 228, 909 P.2d 553, 556 (1995) ("appellant's brief in almost no respect conforms to the requirements of [HRAP] Rule 28(b), which we have held is, alone, sufficient basis to affirm the judgment of the circuit

court" (citation omitted)); Weinberg v. Mauch, 78 Hawai'i 40, 49, 890 P.2d 277, 286 (1995); O'Connor v. Diocese of Honolulu, 77 Hawai'i 383, 385, 885 P.2d 361, 363 (1994); In re Miller and Lieb Water Co., Inc., 65 Haw. 310, 310-11, 651 P.2d 486, 487-88 (1982) (per curiam) (dismissal of appeal warranted for appellant's failure to conform opening brief to the requirements of the predecessor to HRAP Rule 28(b)(4), Supreme Court Rule 3(b)(5)); Alamida v. Wilson, 53 Haw. 398, 405, 495 P.2d 585, 590 (1972) (failure to conform appellate brief to Supreme Court Rule 3(b)(5) on a point of error warrants dismissal of point of error on appeal); Ala Moana Boat Owners' Ass'n v. State, 50 Haw. 156, 157-59, 434 P.2d 516, 517-18 (1967);

(2) Claimant has failed to include in the record on appeal transcripts of pertinent hearings before the Board, including the transcript of the July 10, 2003 hearing which gave rise to the July 14, 2003 decision and order of the Board that Claimant here appeals, HRAP Rule 10(a)(4) (2004), ("record on appeal shall consist of . . . . the transcripts prepared for the record on appeal"); HRAP Rule 10(b)(1)(A) (2004) (where "appellant desires to raise any point on appeal that requires consideration of the oral proceedings before the court or agency appealed from, the appellant shall file with the clerk of the court appealed from, within 10 days after filing the notice of appeal, a request or requests to prepare a reporter's transcript of such parts of the proceedings as the appellant deems necessary

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that are not already on file"); HRAP Rule 10(b)(3) (2004) ("where the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion"); HRAP Rule 11(a) (2004) ("the appellant . . . shall comply with the provisions of [HRAP] Rule 10(b) and shall take any other action necessary to enable the clerk of the court to assemble and transmit the record"); Bettencourt, 80 Hawai'i at 230, 909 P.2d at 558 (the burden "'is upon appellant in an appeal to show error by reference to matters in the record, and he or she has the responsibility of providing an adequate transcript'" (brackets omitted) (quoting Union Bldg. Materials Corp. v. The Kakaako Corp., 5 Haw. App. 146, 151, 682 P.2d 82, 87 (1984))); Lepere v. United Pub. Workers, Local 646, 77 Hawai'i 471, 474, 887 P.2d 1029, 1032 (1995) (appellant "had a duty to include the relevant transcripts of proceedings as a part of the record on appeal" (footnote omitted)); State v. Goers, 61 Haw. 198, 202-3, 600 P.2d 1142, 1144-45 (1979); State v. Hawaiian Dredging Co., 48 Haw. 152, 158, 397 P.2d 593, 598 (1964) (it is "elementary that an appellant must furnish to the appellate court a sufficient record to positively show the alleged error" (citation omitted)); Marn v. Reynolds, 44 Haw. 655, 663, 361 P.2d 383, 388 (1961) (transcript of proceedings must be provided to the appellate court unless "evidence is not necessary for the

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disposition of an appeal on its merits" (citation omitted));  
Ling v. Yokoyama, 91 Hawai'i 131, 135, 980 P.2d 1005, 1009  
(App. 1999); Costa v. Sunn, 5 Haw. App. 419, 430, 697 P.2d 43, 50  
(1985); Johnson v. Robert's Hawaii Tour, Inc., 4 Haw. App. 175,  
178, 664 P.2d 262, 265 (1983); Hawaiian Trust Co., Ltd. v. Cowan,  
4 Haw. App. 166, 168, 663 P.2d 634, 636 (1983); and

(3) Claimant's opening brief is incomprehensible in the  
context of this appeal.

Therefore,

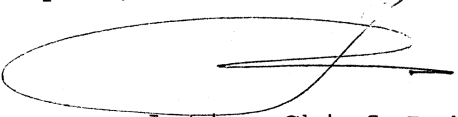
IT IS HEREBY ORDERED that Claimant's appeal is  
dismissed.


DATED: Honolulu, Hawai'i, July 28, 2005.


On the briefs:

Jacek Nowicki,  
Claimant-Appellant, *pro se*.

Brian G.S. Choy and  
Keith M. Yonamine, for  
Employer/Insurance Carrier-Appellee.

  
Acting Chief Judge

  
Associate Judge

  
Associate Judge